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Attorneys for Defendant
THOMAS J. TOMANEK

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

EDITH MACIAS, individually and on behalf of similarly situated individuals; HOTON DURAN; TIFFANY HUYNH; AURA MENDIETA; WILLIAM LABOY; MIGUEL ACOSTA; CRUZ ACOSTA; CUAUHTEMOC TORAL; and TERESA VILLEGAS, KAPIKA SALAMBUE and MARINA DURAN

Case No.: C07 3437 JSW

**DECLARATION OF SARA B. ALLMAN
IN SUPPORT OF MOTION TO BE
DECLARED PREVAILING PARTY AND
FOR AN AWARD OF ATTORNEY'S FEES
AND COSTS**

DATE: March 14, 2008

TIME: 9:00 A.M.

COURTROOM: 2, 17th Floor

JUDGE: Hon. Jeffrey S. White

Date Action Filed: June 29, 2007

Plaintiffs,

vs.

THOMAS J. TOMANEK; and MARK GARIBALDI, individually and doing business as THE GARIBALDI COMPANY,

Defendants.

1 I, Sara B. Allman, declare as follows:

2 1. I am an attorney at law, duly licensed to practice before all the courts of
 3 this state, and am president of Allman & Nielsen, A Professional Corporation, attorneys
 4 of record for defendant THOMAS J. TOMANEK (hereinafter "defendant") herein. The
 5 following facts are within my personal knowledge and, if sworn to testify, I would testify
 6 competently thereto.

7 2. Attached as Exhibit "A" is a true and correct copy of the lease agreement
 8 of plaintiffs Hoton Duran and Edith Macias. I am informed and believe that Exhibit "A"
 9 is the same in form and substance as the lease agreement entered into by each of the
 10 plaintiffs in this action.

11 3. Attached as Exhibit "B" is a true and correct copy of the court's order that
 12 granted defendants' motions to dismiss.

13 4. Attached as Exhibit "C" is a true and correct copy of the court's judgment
 14 pursuant to the court's order granting defendants' motions to dismiss.

15 5. I am a civil litigation attorney with over 24 years of experience in state
 16 and federal court and am AV-rated by Martindale Hubbell.

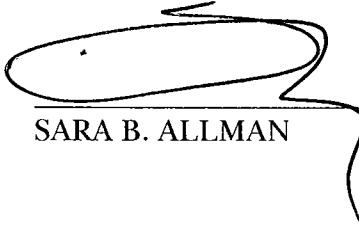
17 6. The attorney's fees incurred to date by Allman & Nielsen, P.C. in
 18 prevailing on behalf of defendant THOMAS J. TOMANEK in the action total \$20,064.
 19 Costs incurred in prevailing in the action total \$187.52. These charges are reasonable
 20 and were necessarily incurred in the defense of moving defendant relative to defense of
 21 the action.

22 7. Attached as Exhibit "D" is a true and correct itemization of the time
 23 actually expended by Allman & Nielsen, P.C. in defending the action up to the time of
 24 submission of the within motion. I have redacted specific descriptions that are

1 privileged. I will make the un-redacted itemizations available for the court's in camera
2 inspection pursuant to Civil L.R. 54-6. Exhibit "D" reflects the time spent and hourly
3 compensation at our usual and customary hourly billing rate herein of \$165 for matters
4 of this type. Our firm bills in increments of .10 of an hour, with a minimum .10 charge.
5 The itemization sets forth the nature of the services rendered in the matter by me. The
6 time records are maintained by the firm's PC Law computer system after manual entry
7 on the date incurred.

8. On January 10, 2008, I met and conferred telephonically with plaintiffs'
9 counsel, Chris Brancart and Elizabeth Brancart, as well as John S. Blackman, counsel for
10 co-defendant Garibaldi, for the purpose of attempting to resolve any disputes with
11 respect to this motion. I also followed up by email correspondence to the Brancarts on
12 January 14, 2008, following my review and analysis of the legal authority cited by
13 plaintiffs' counsel. No resolution was reached.

14 I declare under penalty of perjury under the laws of the State of California that the
15 foregoing is true and correct and that this declaration was executed on this 22nd day of
16 January, 2008, in Larkspur, California.

17 
18 SARA B. ALLMAN
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PROOF OF SERVICE

I am a citizen of the United States and employed in Marin County, California. I am over the age of eighteen years and not a party to the within action. My business address is 100 Larkspur Landing Circle, Suite 212, Larkspur, California 94939-1743.

On this date I served the foregoing documents described as:

DECLARATION OF SARA B. ALLMAN IN SUPPORT OF MOTION TO BE DECLARED PREVAILING PARTY AND FOR AN AWARD OF ATTORNEY'S FEES AND COSTS

on the interested parties in the action by placing the original a true copy thereof, enclosed in a sealed envelope addressed as follows:

Christopher Brancart
Elizabeth Brancart
BRANCART & BRANCART
PO Box 686
Pescadero, CA 94060

Attorney for Plaintiffs EDITH MACIAS, individually and on behalf of similarly situated individuals; HOTON DURAN; TIFFANY HUYNH; AURA MENDIETA; WILLIAM LABOY; MIGUEL ACOSTA; CRUZ ACOSTA; CUAUHTEMOC TORAL; and TERESA VILLEGAS

John S. Blackman
Farbstein & Blackman
411 Borel Ave #425
San Mateo, CA 94402-3518

Attorneys for Defendant
MARK GARIBALDI, individually and doing business as THE GARIBALDI COMPANY

BY MAIL: I deposited such envelope with postage thereon fully prepaid in the United States Postal Service mailbox at Larkspur, California.

BY PERSONAL SERVICE: I delivered such envelope by hand to the addressee.

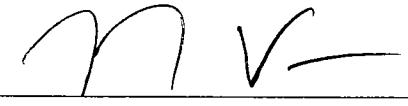
BY FACSIMILE: I sent such document via facsimile to the facsimile machine of the addressee.

BY EXPRESS MAIL: I deposited such envelope in a mailbox regularly maintained by the United States Postal Service for receipt of Express Mail postage paid to be delivered by Express Mail for overnight courier service to the addressee.

BY OVERNIGHT DELIVERY: I deposited the envelope, in an envelope designated by the express service carrier, with delivery fees provided for, in a box regularly maintained by the express service carrier for overnight delivery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge.

1 Executed on January 22, 2008, at Larkspur, California.
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NOLI VILLA

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Exhibit "A"

Rental Agreement

property management services

21st

day of

October

20 04

1. **EFFECTIVE DATE AND PARTIES:** This agreement was made and entered into this 21st day of October, 20 04, between The Garibaldi Company agent for TOMANEK + TOMANEK PARTNERS DBA RANCHO LUNA (hereinafter called "owner") and Hector Duran + Edith Marcas (hereinafter jointly called "tenant"). Other Occupants None.

2. **PREMISES:** Owner agrees to lease to tenant the premises described as apartment# 246 at 3939 Monroe Avenue in Tremont CA 94536.

3. **OCCUPANCY:** The premises shall be used only for residential purposes and not more than 2 persons shall reside there at any time.

4. **TERM AND RENT:** The premises are to be occupied by tenant(s) for the term commencing on Oct 21, 2004 through Oct 31, 2005 (fixed term lease) at a monthly rental rate of \$ 1245.00 or lease term rate of \$ 10,312.00, payable to owner at the apartment manager's office (or such other place as owner shall from time to time designate in writing), without deduction or offset of any kind, in advance and without demand on or before the first day of each calendar month, Rent for the first full calendar month shall be paid at the time of execution of this lease by tenant.

A. If the term of this lease does not begin on the first of a calendar month or end on the last day of a calendar month, the rent for such month shall be pro-rated on the basis of a thirty-day month. The pro-rated rental from the date of move-in to the first day of the following month is \$ 467.00. Tenant's right to possession is expressly contingent upon the prompt payment of rent, and the use of the premises by tenant is obtained only by the condition that rent is paid on time. Owner may require that all rent and other sums due be paid in one monthly check rather than multiple checks.

B. Rent is due and payable the first calendar day of each month. Any payments made after the first are considered late. In the event that the tenant does not provide the rental payment to owner by the fifth of each month, as required, tenant agrees to pay a late charge of \$25.00 on the sixth and an additional \$5.00 per each subsequent day of monies outstanding. The maximum penalty not to exceed 8% of the monthly rent. The late charge will be applied when any monies are outstanding at the close of business on the 5th calendar day of the month. All monies paid after the close of business on the 5th must be paid with either cash, money order or a cashier's check. Tenant understands and agrees that the payment of said late charges in no way constitutes a waiver by owner to any rights that owner has to terminate the tenancy according to law.

C. Owner agrees to accept, as payment of the rent, personal check, cash, money order or cashier's check. Should tenant present a check to owner which does not clear the bank for any reason, tenant must immediately replace the check with either cash, money order, or a cashier's check. Such payment shall include the \$25.00 late charge and returned check bank charges of \$25.00 per check. Tenant must pay any additional or further rent or other charges for the remainder of the residency, by either cash, money order, or cashier's check. No exceptions will be made unless tenant provides the owner with a letter from tenant's bank stating that there was an error on the bank's part which caused the tenant's check to be returned. This error must be verified by the owner. This letter must be an original copy written on banking institution letterhead and signed by an officer of the bank or Savings and Loan. Only upon verification of said letter will the tenant be authorized to pay rent by other than cash, money order or cashier's check.

This rental agreement can be amended modified or supplemented only by a writing signed by both parties. Any purported oral amendment, modification or supplement shall be void.

5. **DEPOSITS:** Tenant agrees to the payment of the following deposits:

A. **Security Deposit:** In addition to the said rental payments, the lessee agrees to pay the sum of \$ 1700.00 herewith, as a security deposit. The said deposit is to be held by the lessor as security for faithful performance after the terms of this agreement. Further the said deposit, or written statement indicating the disposition is to be mailed at the termination of the agreement or within 3 weeks of vacating the premises, less any damages to the premises, fixtures or furnishing, reasonable wear and tear excepted; and less any other amount due under the terms of this agreement.

B. **Pets:** of any kind are prohibited in the common area. Pets of any kind are prohibited on the premises or in the apartment house without prior written consent of the owner which may be revoked at any time, with or without cause. If tenant plans to acquire or bring a new pet on the premises, it shall be reported immediately to the owner who can increase the existing deposit as a condition for owner's permission under this section. Permission is hereby given to resident to maintain the following pet on the premises:

Pet's name NIA, Breed NIA, Color NIA, Weight NIA.

Such permission is in consideration of a pet security deposit in the amount of \$ NIA, subject to deductions for cleaning and repair of pet damages and less any other amount due under the terms of this agreement.

6. **RENTAL INCENTIVE:** In the event tenant has received free rent or concession or other compensation as an inducement to enter into this agreement for a certain lease term, tenant agrees to pay back the incentive prior to tenant vacating the premises if tenant terminates his lease or defaults before the end of the lease term. The value of this incentive is \$ 1 MONTH FREE RENT.

7. **NOTICE TO VACATE:** Owner and tenant agree that the leasehold will terminate on the above stated date only upon written notice from either party thirty (30) days prior to said termination date. If tenant fails to serve such notice on lessor, the parties agree to continue the tenancy month to month, subject to month to month additional rent of \$25.00, subject to the right of the parties to negotiate terms agreeable to both. Lessor agrees to serve notice on tenant of any proposed revision in rental payments thirty (30) days prior to the effective date of such change. If any personal property belonging to the resident is left in the apartment or if the keys are not returned, the former tenant is deemed in control of the apartment and therefore subject to rent liability until the keys are returned and the personal property removed. State law provides that a resident holding over after notice date given is liable for triple rent for each day he holds the apartment beyond the date given.

8. **GUESTS:** The written consent of the owner is required prior to the occupancy of the premises by any guests of tenants for continuous periods greater than 72 hours. If approved by owner, such guests must obey the apartment house rules and policies of owner. Failure of guest to abide by the rules and policies of owner will result in termination of this rental agreement.

9. **APARTMENT HOUSE RULES AND REGULATIONS:** Tenant agrees to abide by all written rules now in effect and as such rules may be amended. Such rules are incorporated herein as part of the terms, covenants and conditions of this agreement. In the event of revision of such rules, Tenant will be notified by the posting of such revised rules in the office of the manager of the apartment. These rules, adopted by owner, are for your protection as well as that of your fellow residents. Owner reserves the right to take whatever steps may be necessary to enforce such rules and regulations. Any violation of the following rules will be grounds for termination of the rental agreement without notice.

A. **Noise.** Sound equipment should be operated in a way that does not disturb others, this equipment is to include but is not limited to stereos, televisions and motor vehicles. Vocal or instrumental music, typing, pounding or other noises are prohibited if the sound penetrates into other apartments. Loud noise, boisterous play, running on stairs and slamming of doors are prohibited. These rules are in effect at all hours, however, the hours of 9:00 p.m. to 9:00 a.m. are considered sleeping hours when any noise may be particularly disturbing to others.

B. **Waterbeds.** Waterbeds are not allowed in the apartment unless written approval has been given by the owner and the tenant has secured insurance coverage to protect against risk of loss or damage to the premises as the result of use of the waterbed on the premises. Tenant agrees to provide owner with a copy of the required insurance coverage prior to the installation of any waterbed.

INSURANCE REQUIRED NIA Yes NIA No INITIALS NIA PROOF PROVIDED NIA DATE NIA. C. **Housekeeping.** Tenant is responsible for maintaining cleanliness on the patio area as well as entryway. House cleaning that might disturb others should be done during normal waking hours 9:00 a.m. to 9:00 p.m.; house cleaning may include but is not limited to vacuuming and operating other major appliances such as dishwasher, washer or dryer. Tenant may not store garbage or other items not intended for exterior exposure on patio or entryway.

D. **Plumbing.** ALL PLUMBING STOPPAGE IS THE RESPONSIBILITY OF THE TENANT. Do not put grease drippings in the drains. Place grease drippings in a container and deposit in trash bin. The "insinkerator" in the kitchen sink is not a "garbage" disposal, rather it is an aid to the disposition of small food particles. Do not put fibrous or solid items in the insinkerator. Do not put unsuitable items in toilet. Unsuitable items include but are not limited to; sanitary napkins, matches, cotton swabs, or course paper.

E. **Damage.** Tenant will be required to pay for all damage to the apartment or apartment complex caused by the tenant or their guests negligence or willful conduct or misconduct.

F. **Vehicles.** Repairs of any kind to vehicles of any kind are not permitted on the premises. Washing of any vehicle is not permitted on the premises except in areas designated by owner. Vehicles leaking or dripping oil of any kind are prohibited. Tenant is responsible for the clean up of any area damaged by oil from their or their guests vehicles. Storage of vehicles is prohibited on the premises and will be subject to tow away at owners expense. Storage to include but not limited to vehicles not currently licensed, vehicles not in use for a period not to exceed fourteen (14) days, or vehicles not maintained in operable condition.

G. **Vehicle Parking.** In the event that tenant or any of tenant's guests park a vehicle in a reserved covered carport space other than that carport assigned to tenant, or park in an undesignated parking space the improperly parked vehicles will be towed, WITHOUT NOTIFICATION, AT THE OWNER'S EXPENSE. It is the tenant's responsibility to monitor and control tenant's parking spaces for their purposes. It is the tenant's responsibility to notify their guests of the parking policy.

H. **Security.** Tenants and guests are responsible for their own safety. Every tenant is expected to assist in crime prevention. The owner makes no warranty as to the provision for security of tenants or guests.

I. **Lock-out Policy.** Tenants are responsible for maintaining access to their apartment. In the event the tenant loses, misplaces or otherwise does not have the keys to their apartment the owner may allow entry into the apartment. Tenant must provide owner with picture identification or must otherwise satisfy owner of their identity. During normal business hours tenant may borrow the key from the office. Failure to return the key will result in a 25.00 fee. After normal business hours tenant must contact office through the afterhours answering

service or courtesy officer, if available. The fee for after hours entry in the apartment, through previously issued keys, must obtain a locksmith. The tenant will be responsible for the payment of the locksmith. All fees, including those paid to the locksmith or owner representative must be paid at the time entry is granted. Owner is not responsible for tenants entry into the apartment.

10. AMENITY AREA GUIDELINES: Apartment amenity areas may include but are not limited to: Pool(s), Spa(s), Fitness Center, Racquetball Court(s), Tennis Court(s), Club House, Sauna(s). The following rules and regulations are designated to maximize your enjoyment of the amenities provided on the premises. Tenants are cautioned regarding safety in the use of the amenities and need to be aware of the hazards which may result from negligent behavior. The owners, management and agents make no warranty regarding safety in the use of the amenities by tenants. Amenity hours are 9 a.m. to 6 p.m. This facility is not rented out for private functions. No food, drink (including but not limited to alcoholic beverages) or smoking are allowed in any indoor amenity area.

Failure to adhere strictly to the rules and regulations is acknowledged as grounds for suspension of privileges and possible termination of the tenancy after service of a 3-day Notice to Quit.

Tenants and guests swim and otherwise use the amenity area at their own risk.

1. Beverages are permitted only around the pool area, and then only in plastic containers.
2. No alcohol or food of any kind.
3. No glass of any kind.
4. Guests are limited to two per apartment and must be accompanied by tenant at all times.
5. No residents or guests under 18 years of age allowed in the indoor athletic facilities.
6. No pets allowed.
7. No running, pushing, shoving, and/or roughhousing.
8. No music equipment allowed unless personal earphones are used.
9. The pool is open for swimming between the hours of 9 a.m. to 6 p.m.
10. Swimmers must wear proper swimming attire. Cut-offs, t-shirts, or undergarments are examples of improper swimming attire.
11. All swimmers 14 years of age or under must be accompanied by the parental resident. Between the hours of 9 a.m. to 6 p.m.

11. CONDITION OF APARTMENT, SURRENDER, DAMAGES: Tenant has had the opportunity to inspect the apartment and acknowledges that the apartment on the date of execution of this agreement is in good and habitable condition; subject to Exhibit A. As a part of the consideration for rental as stated above, tenant will keep and maintain the apartment, appurtenances, and personal property belonging to lessor, in good, safe, sanitary and operating condition during the terms of this agreement. Tenant shall be responsible for payment for damages or repairs necessitated by the unwillful or negligent conduct of tenant or tenant's guests. Payment for repairs due to any damage or injury caused to the apartment by tenant or any person who may be in the apartment shall be made by tenant. Tenant shall, at the termination of this agreement, without further notice to quit, surrender to owner the apartment, with all appurtenances and personal property belonging to owner in as good condition as when inspected on the date of execution of this agreement, with the reasonable wear and tear and damage by the elements excepted. Attached hereto as Exhibit A is the move-in Inspection Report, a copy of which is hereby acknowledged by tenant.

Tenant shall return completed copy by 72 hours and in exchange will receive the mail box key.

12. ALTERATIONS: Tenant shall make no alterations or undertake redecorating without the prior written consent of owner. No screws, nails, or other materials shall be imbedded or attached to the walls of the premises, except that pictures may be hung with picture hooks. No nails will be put in any wallpaper. Owner shall make or cause to be made and shall pay for: (1) all structural and mechanical repairs provided the need for such repairs are not caused by or contributed to by the fault of tenant, his guests, friends, agents, or employees; and (2) all repairs required by ordinary wear and tear. Tenant shall be responsible for all abnormal wear and tear including but not limited to stains to carpeting, nicks or tears to the linoleum, or marks to the paint during the course of tenant's occupancy and control.

13. ASSIGNMENT/SUBLETTING: Tenant agrees not to transfer or assign any interest in this agreement or the premises, nor to sublet the apartment, or any part thereof, without the written consent of owner. No occupant other than those listed above shall reside in the apartment. Any occupant residing in the apartment in breach of this agreement shall have no right in or to the apartment and the tenancy may be terminated by owner without notice to any such occupant.

14. UTILITIES: Tenant agrees to pay for all utilities including any deposits required except water, sewer and garbage and to hold owner harmless therefrom. Owner shall have no responsibility for the interruption of utility services furnished by third-parties.

15. LAWS: The law of the state wherein the apartments are located shall govern the interpretation, validity and enforcement of this agreement. If any provision of this agreement shall be declared invalid or unenforceable by a court of competent jurisdiction, the validity and enforceability of the remaining provisions of this agreement shall be affected thereby.

16. INSPECTION: Owner or its agent or agents shall be allowed to enter the apartment as provided by state law. And upon 24 hours written notice, the owner may enter to inspect the condition of the premises and/or appliances therein.

17. TERMINATION: This tenancy may be terminated by owner or tenant as provided by state law. Resident must give 30 days written notice of intent to vacate. Owner or its agents shall have the right to enter to take possession of the apartment as provided by state law, tenant shall be liable for payment of the full rental for the tenancy.

18. BARBECUES: Tenants are discouraged from the use of outdoor cooking grills on the premises. Tenant acknowledges and assumes liability for damages or loss resulting from such use. Any use of a grill larger than 288 square inches is strictly forbidden. Tenant must dispose of ashes properly.

19. LIABILITY: The owner is not responsible for damage to any personal property on the premises. Property on the premises shall be at the risk of the tenant, occupant or other owner of same and owner shall in no event be liable for loss or damage of such property, unless caused by the negligence of the owner. Tenant shall be liable for any claims of loss or damage to property, and injury or death to persons caused by negligence of tenant, his invitees or uninvited guests occurring on the rented premises. Tenant assumes all responsibility for any and all property of tenant or third persons under tenant's control, place stored or located on the premises or elsewhere in or around the premises. Tenant is responsible for insurance coverage for such personal property in the event that such coverage is desired by tenant.

20. MORTGAGE: This agreement shall be subject and subordinate at all times to the lien of existing mortgages, deeds of trust, and financing statements upon leased property, and of mortgages, deeds of trust and financing statements which hereafter may be made a lien on the leased property, and to any renewal, modification, consolidation, replacement and extension of any such existing or future mortgages, deeds of trust and financing statements. Although no instrument or act on the part of the tenant shall be necessary to effectuate such subordination, tenant will, nevertheless, execute and deliver such further instruments subordinating this agreement to the lien of any such mortgages, deeds of trust, or financing statements as may be desired by the mortgagee. Tenant hereby appoints owner his attorney in fact, irrevocably, to execute and deliver any such instrument for tenant.

21. CONDEMNATION: If the whole of the property on which the premises are located, or such portion thereof as will make the property and/or the premises unsuitable for the purposes herein leased, is sold under threat of condemnation or is condemned for any public use or purpose by any legally constituted authority, then in either of such events this agreement shall cease and terminate from time when possession is taken by such public authority and rental shall be accounted for between owner and tenant at the date of the surrender of possession. Tenant shall have no claim against owner or the condemning authority for the unexpired term of this agreement.

22. GENERAL PROVISIONS: All terms, covenants and conditions herein are binding upon trustee to the benefit of the heirs, executors and assigns of owner and tenant. This agreement constitutes the entire agreement between the parties and recites the entire consideration of the parties, and no representations or oral agreement not described in writing and no oral evidence may be offered to support such claims have been made by either party or their agents. Failure by owner to enforce the provisions herein in regard to any breach of any terms, covenants or conditions of this agreement shall not constitute a waiver of the future right to enforce such provision.

23. ATTORNEY'S FEES AND COSTS: Tenant acknowledges that if any legal action or proceeding to enforce the terms of this agreement is necessary, the prevailing party in such action is entitled to recovery of a reasonable attorney fee and costs of such action in addition to all other amounts owed, to the extent authorized by state law.

24. RENTAL APPLICATION: Attached hereto as Exhibit B is a rental application executed by tenant under penalty of perjury. In the event that any information upon tenant's rental application is incorrect or is unverifiable such incorrect information will constitute a material and irremediable breach of this rental agreement as the accuracy of such information is a condition precedent to tenant's entitlement to the benefits of this agreement, and owner may evict tenant after service of a 3 day notice to quit. It is the responsibility of the tenant to update owner regarding any changes of the information on the application, especially employment information.

NOTICE TO TENANT: Do not sign this agreement or any attached hereto if there are any blank spaces or incomplete sentences. By execution of this rental agreement tenant acknowledges receipt of a completely filled in rental agreement and attachments as set forth in this rental agreement.

Subject to the above-stated terms, owner hereby acknowledges receipt of the above-stated amount, and in consideration thereof, rents to the above-named tenant (whether one or more) and tenant hereby takes from owner, the apartment described above to be used by tenant as a lawful resident upon the terms hereinabove set forth, each of which are covenants as well as conditions.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the date and year first written above at 3939 Monroe Avenue
Fremont CA 94536

OWNER'S AGENT:

TENANT OR OCCUPANT:

Johnayn

M. and Mary
Theresa Dunn

Exhibit "B"

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IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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EDITH MACIAS, et al.,

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Plaintiffs,

No. C 07-03437 JSW

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v.

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THOMAS J. TOMANEK, et al.,

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Defendants.

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**ORDER GRANTING
GARIBALDI'S MOTION TO
DISMISS AND GRANTING
TOMANEK'S MOTION TO
DISMISS**

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Now before the Court are the motions to dismiss filed by Defendant Mark Garibaldi individually and doing business as The Garibaldi Company (collectively "Garibaldi") and filed by Defendant Thomas J. Tomanek ("Tomanek"). The Court finds that these matters are fully briefed and appropriate for disposition without oral argument and are hereby deemed submitted. *See Civ. L.R. 7-1(b).* Accordingly, the hearing set for January 11, 2008 is HEREBY VACATED. Having carefully considered the motions and the relevant legal authority, the Court hereby GRANTS Garibaldi's motion to dismiss and GRANTS Tomanek's motion to dismiss.

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BACKGROUND

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Plaintiffs are nine former tenants of the Rancho Del Sol and/or Rancho Luna apartments in Fremont, California. Thomas J. Tomanek is an owner of the properties and defendant Mark Garibaldi, doing business as the Garibaldi Company, is the property manager. Plaintiffs claim that charges were improperly imposed against their security deposits. In what is essentially a landlord-tenant dispute, Plaintiffs allege that Garibaldi violated the Racketeer Influenced and

1 Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961, *et seq.*, by “engaging in a scheme of
2 misrepresentation and other unlawful acts in connection with retaining tenants’ security
3 deposits and demanding additional payments for alleged property damage upon move-out.”
4 (Compl., ¶ 1.) The rest of the claims and all claims against Tomanek are based in California
5 state law.

6 **A. Legal Standards Applicable to Motions to Dismiss.**

7 A motion to dismiss is proper under Rule 12(b)(6) where the pleadings fail to state a
8 claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A motion to dismiss should
9 not be granted unless it appears beyond a doubt that a plaintiff can show no set of facts
10 supporting his or her claim. *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *see also De La Cruz*
11 *v. Tormey*, 582 F.2d 45, 48 (9th Cir. 1978). The complaint is construed in the light most
12 favorable to the non-moving party and all material allegations in the complaint are taken to be
13 true. *Sanders v. Kennedy*, 794 F.2d 478, 481 (9th Cir. 1986). The court, however, is not
14 required to accept legal conclusions cast in the form of factual allegations if those conclusions
15 cannot reasonably be drawn from the facts alleged. *Clegg v. Cult Awareness Network*, 18 F.3d
16 752, 754-55 (9th Cir. 1994) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)).

17 **B. Plaintiffs Fail to State a Claim for RICO Violation.**

18 The essential elements of a civil RICO violation under 18 U.S.C. § 1962(c) are:
19 “(1) conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity.” *Sedima*,
20 *S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985); *see also Miller v. Yokohama Tire Corp.*,
21 358 F.3d 616, 620 (9th Cir. 2004). “‘Racketeering activity’ is defined in 18 U.S.C. §
22 1961(1)(B) as including any act ‘indictable’ under certain enumerated federal criminal statutes,
23 including 18 U.S.C. §1341, which makes mail fraud a criminal offense.” *Yokohama Tire*, 358
24 F.3d at 620 (citing *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.2d 1393, 1399 (9th
25 Cir. 1986)). To allege a violation of mail fraud under § 1341, “it is necessary to show that (1)
26 the defendants formed a scheme or artifice to defraud; (2) the defendants used the United States
27 mails or caused a use of the United States mails in furtherance of the scheme; and (3) the
28 defendants did so with the specific intent to deceive or defraud.” *Id.* (citing *Schreiber*, 806 F.2d

1 at 1400). To be considered part of the fraud, the use of the mails need not be an essential
2 element of the scheme. *Schmuck v. United States*, 489 U.S. 705, 710 (1989). “It is sufficient
3 for the mailing to be ‘incident to an essential part of the scheme’ or ‘a step in [the] plot.’” *Id.*
4 (citing *Badders v. United States*, 240 U.S. 391, 394 (1916)).

5 Although plaintiffs need not plead “racketeering injury,” they must demonstrate that
6 their business or property was injured *by reason of* the alleged RICO violation. In other words,
7 plaintiffs must allege that their injury was proximately caused by a RICO violation. *Chaset v.*
8 *Fleer/Skybox Int'l*, 300 F.3d 1083, 1086 (9th Cir. 2002). In order to establish proximate cause,
9 plaintiffs must demonstrate that there exists a “direct relation between the injury asserted and
10 the injurious conduct alleged.” *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258,
11 266 (1992).

12 In this case, Plaintiffs allege that Garibaldi committed mail fraud by mailing closing
13 statements to Plaintiffs detailing the cleaning and repair work performed by the landlord, the
14 amounts paid for that work, and the net refund or balance due after applying the security
15 deposit. (Compl., ¶ 43.) Plaintiffs maintain that the fraudulent scheme involved both the
16 representation in the mailings as well as the representations, upon move-in, that there would not
17 be deductions from the renters’ security deposits based on ordinary wear and tear on the property.
18 Plaintiff contend that when they later vacated the apartments, they were charged for the
19 ordinary wear and tear. (*Id.*) Plaintiffs allege a scheme to defraud based on the
20 misrepresentations made to them to induce them to part with their security deposits, and that
21 Garibaldi used the United States mails in furtherance of that scheme by sending them the
22 security deposit closing statements through the mails. (*Id.*; Opp. Br. at 4.)

23 However, the “federal mail fraud statute does not purport to reach all frauds, but only
24 those limited instances in which the use of the mails is a part of the execution of the fraud,
25 leaving all other cases to be dealt with by appropriate state law.” *Kann v. United States*, 323
26 U.S. 88, 95 (1944). In this matter, the alleged mailings constituting the execution of the fraud
27 occurred after Garibaldi had gained final possession of the tenants’ security deposits.
28 According to well-settled Supreme Court precedent, if the mailings occur after the

1 consummation of the fraudulent scheme's objective, such mailings will not support a mail fraud
2 charge. *See, e.g., id.* at 94 (finding that after-the-fact mailings were not material to execution of
3 the fraud because the "scheme ... had reached fruition. The persons intended to receive the
4 money had received it irrevocably."); *Parr v. United States*, 363 U.S. 370, 393 (1960) ("Here,
5 as in *Kann*, '[t]he scheme in each case had reached fruition' when [those charged] received the
6 goods and services complained of."); *United States v. Maze*, 414 U.S. 395, 401 (1974) (noting
7 that "Respondent's scheme had reached fruition when he checked out of the motel").

8 There are two recognized exceptions to the general rule restricting liability for post-
9 consummation instances of mail fraud. The first, recognized in *United States v. Sampson*, holds
10 that where mailings are designed to "lull the victim" by falsely promising performance, they
11 may be incident to the scheme even if they occur after the defendant has already taken the
12 victim's property. 371 U.S. 75, 78 (1960) (district court erred in dismissing RICO claim in
13 which mailings were allegedly made "for the purpose of lulling said victims by representing
14 that their applications had been accepted and that the defendants would therefore perform for
15 said victims the valuable services which the defendants had falsely and fraudulently represented
16 that they would perform.") In this matter, the fact that Garibaldi sent out notices of the
17 deductions in the tenants' security deposits were more likely to alert Plaintiffs to the supposed
18 fraud, then to lull them into complacency. *See United States v. Manarite*, 44 F.3d 1407, 1413
19 (9th Cir. 1995) (reversing mail fraud convictions where after-the-fact mailings "were clearly not
20 part of any kind of lulling scheme. They would not assure the victim that all is well; rather,
21 they would have exposed the credit scam and increased the likelihood of the Manarites'
22 apprehension.").

23 The second recognized exception to after-the-fact mailings, is elucidated in the case
24 relied upon Plaintiffs here, *Schmuck v. United States*, 489 U.S. 705. In that case, the Court
25 found that after-the-fact mailings of the title to retail purchasers of used cars with tampered
26 odometers was an essential step in the fraudulent scheme because the success of the venture
27 depended upon the auto retail dealers' continued faith in the operation and their ability to resell
28 cars. The Court found "although the registration-form mailings may not have contributed

1 directly to the duping of either retail dealers or the customers, they were necessary to the
2 passage of title, which in turn was essential to the perpetuation of Schmuck's scheme." *Id.* at
3 712.

4 In this matter, the alleged scheme of withholding unlawful amounts from the tenants'
5 security deposits had reached fruition by the time Plaintiffs were alerted that Garibaldi was
6 withholding funds from their deposits through the mailed notices. The notice sent by mail did
7 not have the effect of lulling Plaintiffs, rather it drew attention to the alleged fraud. Further, the
8 mailed notices did not contribute to the alleged duping scheme and were not essential to it, but
9 rather were a required notice of the withholdings under California law.

10 In addition, the fact that the mailings were made pursuant to California law compels the
11 conclusion that such mailings were not criminal under the federal mail fraud statute. *See Parr*,
12 360 U.S. at 391 (holding that the legally compelled mailings were not unlawful steps in
13 perpetrating a fraud because "it cannot be said that mailings made or caused to be made under
14 the imperative command of duty imposed by state law are criminal under the federal mail
15 statute.")

16 Lastly, in order to establish a RICO injury, Plaintiffs must demonstrate that their
17 business or property was injured by reason of the alleged RICO violation. Plaintiffs must allege
18 that their injury was proximately caused by a RICO violation. *Fleer/Skybox*, 300 F.3d at 1086;
19 *see also Holmes*, 503 U.S. at 266 (plaintiffs must demonstrate that there exists a "direct relation
20 between the injury asserted and the injurious conduct alleged."). The mailings documenting
21 the disposition of the security deposit funds is not the cause of Plaintiffs' alleged injuries. The
22 predicate act purportedly giving rise to RICO jurisdiction is too attenuated to satisfy the
23 requirement to plead proximate cause or sufficient RICO injury.

24 **C. Complaint is Dismissed for Lack of Subject Matter Jurisdiction.**

25 Absent Plaintiffs' RICO claim, there is no independent basis for the exercise of federal
26 jurisdiction. Pursuant to 28 U.S.C. § 1337(c)(3), the Court declines to exercise supplemental
27 jurisdiction over Plaintiffs' state law claims and the complaint is dismissed in its entirety.

1
2 **D. Tomanek's Motion to Dismiss is Granted.**3 Because the Court has dismissed the RICO claim against Garibaldi and has dismissed
4 the remaining state law claims, as Plaintiffs concede, the Court must dismiss the complaint as
5 against Tomanek for lack of subject matter jurisdiction.6 **CONCLUSION**7 Accordingly, Defendant Garibaldi's and Defendant Tomanek's motions to dismiss are
8 GRANTED with prejudice. The Court notes that Plaintiffs are not without a potential remedy
9 in state court.10
11 **IT IS SO ORDERED.**

12 Dated: January 8, 2008

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14 JEFFREY S. WHITE
15 UNITED STATES DISTRICT JUDGE
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Exhibit "C"

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6 EDITH MACIAS, et al.,

7 Plaintiffs,

8 No. C 07-03437 JSW

9 v.

10 THOMAS J. TOMANEK, et al.,

11 **JUDGMENT**

12 Defendants.

13
14
15 Pursuant to the order granting Garibaldi's and Tomanek's motions to dismiss entered
16 today, this action is DISMISSED. The Clerk is directed to close the file.

17
18 **IT IS SO ORDERED AND ADJUDGED.**

19
20 Dated: January 8, 2008



21
22 JEFFREY S. WHITE
23 UNITED STATES DISTRICT JUDGE
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28

Exhibit "D"

ALLMAN & NIELSEN, P.C.
 100 Larkspur Landing Circle, Suite 212
 Larkspur, CA 94939

Ph:415 461 2700

Fax:415 461 2726

September 11, 2007

Attention: [REDACTED] File #: FA-576
 Inv #: 656

RE: Macias v. Tomanek

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jul-25-07	Telephone call from [REDACTED] re new matter.	0.10	16.50	SBA
	Read/analyze complaint re new matter.	0.60	99.00	SBA
	Telephone call to [REDACTED] re new matter.	0.10	16.50	SBA
Jul-26-07	Telephone call with Chris and Liz Brancart re involvement in case, appearances, concerns re Tomanek not on RICO claim because not enterprise.	0.20	33.00	SBA
	Telephone call with [REDACTED] [REDACTED] [REDACTED]	0.20	33.00	SBA
	Telephone call with Mr. Quint re representation [REDACTED] [REDACTED]	0.40	66.00	SBA
	Telephone call with Mr. Quint and Mr. Ciochon who represents Garibaldi re [REDACTED]	0.30	49.50	SBA
	Letter to Mr. Quint re information re Garibaldi.	0.10	16.50	SBA

	Letter to Mr. Ciochon re [REDACTED] [REDACTED] appearance.	0.10	16.50	SBA
	Letter to [REDACTED] re acknowledgement.	0.10	16.50	SBA
	Letter to [REDACTED] re representation.	0.10	16.50	SBA
	Letter to plaintiff's attorney re representation and time to respond.	0.10	16.50	SBA
	Draft/revise further letter to plaintiff's attorney confirming time to respond and re potential acceptance re appearance of Garibaldi.	0.10	16.50	SBA
	Legal Research re potential dispositive motion re preemption argument and re RICO requirements and state statutory requirements.	2.50	412.50	SBA
Jul-27-07	Read/analyze letter from attorney Quint re tenant documentation.	0.10	16.50	SBA
Jul-28-07	letter from attorney Quint re [REDACTED] contact information and letter to him re same.	0.10	16.50	SBA
Jul-30-07	Read/analyze tenant information and documentation re [REDACTED]	1.90	313.50	SBA
	Read/analyze tenant information and documentation re [REDACTED]	0.90	148.50	SBA
	Read/analyze tenant information and documentation re 205 plaintiffs.	0.70	115.50	SBA
	Letter to x 3 Garibaldi attorney re questions re [REDACTED] [REDACTED]	0.10	16.50	SBA
	Read/analyze letter from Carl Ciochan re responses to questions [REDACTED]	0.10	16.50	SBA
	Legal Research re potential dispositive motion to dismiss [REDACTED]	1.60	264.00	SBA
Jul-31-07	Read/analyze multiple letters from attorney Quint and attorney Ciochon re representation concerns.	0.10	16.50	SBA

	Letter to x 2 to Mr. Ciochon [REDACTED]	0.10	16.50	SBA
	Letter to Mr. Quint re proposed action re security deposit information.	0.10	16.50	SBA
	Telephone call to [REDACTED] re status.	0.10	16.50	SBA
	Legal Research re FRCP 9 requirements of specificity on RICO claims [REDACTED]	1.40	231.00	SBA
Aug-01-07	Read/analyze management agreement provisions [REDACTED]	0.30	49.50	SBA
	Telephone call with [REDACTED] re status and concerns of attorneys for Tomanek and Garibaldi.	0.20	33.00	SBA
	Read/analyze letter from attorney Quint re concerns re [REDACTED]	0.10	16.50	SBA
	Telephone call to further [REDACTED] re letter from attorney Quint/status.	0.10	16.50	SBA
	Letter to Mr. Quint in response to his re representation concerns.	0.10	16.50	SBA
	Telephone call to plaintiff's attorney Brancart re meeting pre appearance to discuss case.	0.10	16.50	SBA
Aug-02-07	Read/analyze [REDACTED]	0.80	132.00	SBA
	Letter to Mr. Ciochon requesting [REDACTED]	0.10	16.50	SBA
	Read/analyze letter from [REDACTED] to Garibaldi and Tomanek re defense.	0.10	16.50	SBA
Aug-07-07	letter from plaintiff's attorney Brancart re Tomanek appearance.	0.10	16.50	SBA
	Letter to plaintiff's attorney re meeting.	0.10	16.50	SBA

Aug-09-07	Read/analyze letter from plaintiff's attorney re meeting and letter from [REDACTED] re status.	0.10	16.50	SBA
	letter to [REDACTED] re status re defense decisions.	0.10	16.50	SBA
	Letter to [REDACTED] re discussion re status.	0.10	16.50	SBA
Aug-10-07	Telephone call with Mr. Quint re meeting with plaintiff's attorney and need to meet with client.	0.20	33.00	SBA
	Letter to plaintiff's attorney re meeting and Quint participation in same.	0.10	16.50	SBA
	Telephone call with [REDACTED] [REDACTED]	0.30	49.50	SBA
Aug-13-07	Telephone call with plaintiff's attorney Brancarts and personal attorney for client re potential early resolution and necessary information from both sides to put the case in a settlement posture.	0.70	115.50	SBA
	Telephone call with Mr. Quint and Mr. Ciochon re proposed action re necessary information to put case in settlement posture and re evaluation/assessment.	0.50	82.50	SBA
	Legal Research re RICO claim [REDACTED] meaning and distinction of ordinary wear and tear versus damages, and review requirements for mail fraud claims.	1.60	264.00	SBA
Aug-15-07	Meeting with -extended-[REDACTED] roundtable discussion re proposed action re defense and strategy.	1.60	264.00	SBA
Aug-16-07	prepared roundtable/case management agreement with additions re legal research re plaintiff theories.	1.80	297.00	SBA
Aug-17-07	Draft/revise additions to Roundtable report re liability exposure.	0.30	49.50	SBA
	Letter to [REDACTED] re report.	0.10	16.50	SBA

Aug-21-07	review file re required items for voluntary exchange with plaintiff's attorney.	0.10	16.50	SBA
	Letter to attorneys for Garibaldi and client re conference to discuss appearance status and exchange with plaintiff's attorney.	0.10	16.50	SBA
	Letter to plaintiff's attorney in response to his re exchange of documentation.	0.10	16.50	SBA
	Letter to plaintiff's attorney re enlargement of time re response.	0.10	16.50	SBA
	Draft/revise stipulation re enlargement of time consistent with rules.	0.20	33.00	SBA
Aug-22-07	letter from and letter to Mr. Ciochon re conference.	0.10	16.50	SBA
Aug-23-07	Read/analyze further complaint re [REDACTED] motion viability.	0.40	66.00	SBA
	letter from counsel re and confirming conference to [REDACTED] [REDACTED]	0.10	16.50	SBA
	Letters to defense counsel re defense meeting and stipulation.	0.10	16.50	SBA
	appeared at teleconference re defense meeting re [REDACTED] [REDACTED]	1.10	181.50	SBA
	prepared for defense teleconference.	0.30	49.50	SBA
	Letter to plaintiff's attorney re and enclosing stipulation.	0.10	16.50	SBA
Aug-24-07	Read/analyze stipulation executed by plaintiff's attorney and co-defendant attorney and submission to court.	0.10	16.50	SBA
Aug-27-07	letter from multiple defense counsel re reliance requirement issues re RICO claim.	0.10	16.50	SBA
	letter from [REDACTED] re conference.	0.00	0.00	SBA
	Telephone call with [REDACTED] [REDACTED]	0.20	33.00	SBA

	Letter to all counsel re plaintiff's attorney position re reliance issue.	0.10	16.50	SBA
	Legal Research re [REDACTED] motion support.	1.30	214.50	SBA
	Draft/revise initial memorandum of points and authorities in support of [REDACTED] motion	1.10	181.50	SBA
	prepared notice of [REDACTED] motion.	0.10	16.50	SBA
	Draft/revise [REDACTED]	0.20	33.00	SBA
Sep-03-07	letter from plaintiff's attorney Brancart re document exchange concerns.	0.10	16.50	SBA
	Letter to Mr. Quint re reply to plaintiff's attorney re documents.	0.10	16.50	SBA
Sep-04-07	Read/analyze various letter from co-attorneys and plaintiff's attorney re document exchange.	0.10	16.50	SBA
	Draft/revise letter to plaintiff's attorney and defense attorney re document concerns.	0.10	16.50	SBA
	Draft/revise letter to Garibaldi attorneys re [REDACTED]	0.10	16.50	SBA
	Read/analyze complaint and tenant files of Macias, Mendieta and Duran re evidentiary support re [REDACTED] motion.	0.90	148.50	SBA
	Draft/revise declaration of [REDACTED]	0.70	115.50	SBA
	Draft/revise further memorandum of points and authorities re [REDACTED] motion arguments.	3.70	610.50	SBA
Sep-05-07	Telephone call with all defense counsel, including Garibaldi's and Tomanek's personal counsel, re strategy, motion to dismiss, potential joinder of Tomanek, probable non-pursuit of [REDACTED] motion, and disclosure deferral.	1.10	181.50	SBA
	Telephone call with Matt Quint post defense	0.10	16.50	SBA

conference re concerns re [REDACTED]

	Draft/review letter to plaintiff's attorney re impending motion to dismiss and deferral of disclosures.	0.10	16.50	SBA
	Legal Research re defense of lack of supplemental jurisdiction and review section 1367 and 1332 re same.	0.30	49.50	SBA
Sep-06-07	letter from plaintiff's attorney re motion to dismiss and disclosure concerns.	0.10	16.50	SBA
	Letter to plaintiff's attorney re service issues and disclosures and letter to Mr. Quint re same.	0.10	16.50	SBA
	Legal Research re potential 12b6 motion with or separate from answer and analysis of cases re propriety of submission of dispositive motions with responsive pleading [REDACTED]	1.70	280.50	SBA
Sep-10-07	prepared litigation plan.	0.70	115.50	SBA
	Letter to multiple attorneys re further conference, question re validity of Tomanek appearance, and status of motion to dismiss.	0.10	16.50	SBA
	letter from attorneys for defense re defenses and further meetings.	0.10	16.50	SBA
	status report to [REDACTED] re status of response and abandonment of [REDACTED] motion [REDACTED]	0.10	16.50	SBA
	prepared certification of interested parties and particular responses to 77 specific averments of plaintiffs.	2.30	379.50	SBA
Sep-11-07	Read/analyze letter from Mr. Ciochon re [REDACTED]	0.10	16.50	SBA

dismiss and letter from Mr. Quint re motion
thoughts.

Letter to Mr. Ciochon re motion.	0.10	16.50	SBA
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Totals	40.70	\$6,715.50
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DISBURSEMENTS

Jul-30-07	Photocopying @ \$.10 per page. 33 @ 0.10	3.30
Aug-15-07	Photocopying @ \$.10 per page. 8 @ 0.10	0.80
Aug-28-07	Photocopying @ \$.10 per page. 2 @ 0.10	0.20

Totals	\$4.30
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Total Fee & Disbursements	\$6,719.80
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Balance Now Due	\$6,719.80
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TAX ID Number 94-3268610

ALLMAN & NIELSEN, P.C.
 100 Larkspur Landing Circle, Suite 212
 Larkspur, CA 94939

Ph:415 461 2700

Fax:415 461 2726

October 17, 2007

Attention: [REDACTED] File #: FA-576
 Inv #: 685

RE: Macias v. Tomanek

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Sep-12-07	Read/analyze explanation of [REDACTED] Garibaldi re [REDACTED]	0.10	16.50	SBA
	Telephone call with all defense counsel re strategy and concerns re [REDACTED]	0.80	132.00	SBA
	Telephone call with [REDACTED]	0.20	33.00	SBA
	Letter to [REDACTED] recommending [REDACTED]	0.10	16.50	SBA
	Legal Research re [REDACTED]	1.40	231.00	SBA
	Telephone call from Mr. Quint re client meeting.	0.10	16.50	SBA
	Letter to Mr. Blackman re [REDACTED] contact information [REDACTED]	0.10	16.50	SBA
	letter from and letter [REDACTED] re [REDACTED]	0.10	16.50	SBA

	Letter to all defense counsel re [REDACTED]	0.10	16.50	SBA
	Read/analyze Garibaldi initial draft re motion to dismiss re failure to state a claim.	0.30	49.50	SBA
	Letter to attorney for Garibaldi re specific feedback and authorities re motion to dismiss.	0.30	49.50	SBA
Sep-13-07	prepared certification of interested parties.	0.10	16.50	SBA
	prepared draft [REDACTED]	0.40	66.00	SBA
	Legal Research re motion to dismiss for lack of subject matter jurisdiction re pendent jurisdiction, original jurisdiction, court's requirements re motion, and case law in support.	2.40	396.00	SBA
	prepared notice of motion to dismiss and points and authorities re support for same.	1.60	264.00	SBA
	Letter to attorney Quint re motion to dismiss.	0.10	16.50	SBA
	Letter to attorney Blackman and Ciochon re our motion to dismiss.	0.10	16.50	SBA
	telephone call from attorney Blackman re approbation of motion to dismiss.	0.10	16.50	SBA
	letter from attorney Quint and letter from attorney Ciochon re defendants' motions.	0.10	16.50	SBA
	Read/analyze and prepared revisions of attorney Quint to motion to dismiss.	0.20	33.00	SBA
	Draft/review further motion to dismiss.	0.40	66.00	SBA
	Letter to defense counsel re motion to dismiss.	0.10	16.50	SBA
	prepared proposed order granting motion to dismiss.	0.20	33.00	SBA
	Read/analyze Garibaldi revised motion to dismiss.	0.30	49.50	SBA
	Letter to Mr. Blackman re revised motion of Garibaldi.	0.10	16.50	SBA

Sep-14-07	Read/analyze letter from [REDACTED] and Mr. Blackman re communication between [REDACTED]	0.10	16.50	SBA
	Read/analyze [REDACTED] to client Tomanek.	0.10	16.50	SBA
	Telephone call with [REDACTED] re status of communications with [REDACTED]	0.10	16.50	SBA
	Letter to attorney Blackman re concerns re our representation.	0.10	16.50	SBA
	letter from Mr. Quint re client meeting.	0.10	16.50	SBA
	Letter to Mr. Quint re client meeting.	0.10	16.50	SBA
	letter from plaintiff's attorney Brancart, Liz, re question re hearing on motion.	0.10	16.50	SBA
	Letter to plaintiff's attorney x 2 re hearing issues.	0.10	16.50	SBA
	Read/analyze judge White's ruling re briefing on motion to dismiss of Tomanek.	0.10	16.50	SBA
Sep-17-07	letter from Mr. Quint and Mr. Blackman re submissions.	0.10	16.50	SBA
	Letter to Mr. Quint re submissions.	0.10	16.50	SBA
	Read/analyze court's ruling re Garibaldi briefing.	0.10	16.50	SBA
Sep-18-07	Telephone call from and telephone call to Mr. Ciochon re communications with [REDACTED]	0.10	16.50	SBA
	[REDACTED] read file in preparation for client meeting.	0.80	132.00	SBA
Sep-19-07	Travel to/from San Francisco.	1.70	280.50	SBA
	Meeting with attorney Quint and participated in defense phone conference [REDACTED]	2.40	396.00	SBA
	[REDACTED] meeting with client [REDACTED]			

	Telephone call with attorney Blackman and plaintiff's attorney re potential change in disclosure and case Management Conference and hearing date re dispositive motions.	0.20	33.00	SBA
Sep-20-07	Letter to Mr. Blackman re mistake re stipulation.	0.10	16.50	SBA
	Read/analyze revised stipulation and order.	0.10	16.50	SBA
	Read/analyze letter from attorney Blackman re stipulation re disclosures and case Management Conference.	0.10	16.50	SBA
	Letter to Mr. Blackman re suggested revisions to stipulation.	0.10	16.50	SBA
Sep-21-07	Read/analyze court's further ruling re case Management Conference and hearing re motions to dismiss.	0.10	16.50	SBA
Sep-25-07	Read/analyze letter from Mr. Ciochon to Ms. Martin re [REDACTED]	0.10	16.50	SBA
	Read/analyze Ciochon analysis re application of [REDACTED]	0.10	16.50	SBA
Sep-26-07	letter from Mr. Blackman re [REDACTED]	0.10	16.50	SBA
Sep-27-07	Telephone call with all defense attorneys re status and deferral of rule 26 obligations and re concerns re [REDACTED] [REDACTED] [REDACTED]	0.60	99.00	SBA
Sep-28-07	Telephone call to [REDACTED] re clarification re our prior draft motion re [REDACTED] [REDACTED]	0.10	16.50	SBA
	Letter to Mr. Quint re re clarification re our prior draft motion re [REDACTED] [REDACTED]	0.10	16.50	SBA
Oct-01-07	letter from Mr. Quint [REDACTED] re motion [REDACTED] [REDACTED]	0.10	16.50	SBA
	Letter to Mr. Quint re [REDACTED]	0.10	16.50	SBA

Oct-02-07	Telephone call from and telephone call to Mr. Quint re [REDACTED] [REDACTED]	0.20	33.00	SBA
	read file re preparation for teleconference with defense counsel re issue of further motion re first amended complaint.	0.60	99.00	SBA
Oct-03-07	Telephone call with all defense counsel re approach and potential motion re first amended complaint.	0.80	132.00	SBA
	Telephone call with x 3 [REDACTED] re concerns re status and representation of client.	0.40	66.00	SBA
	Read/analyze letter from Mr. Quint [REDACTED] [REDACTED]	0.10	16.50	SBA
	Telephone call with plaintiff's attorney Brancart re okay to respond to first amended complaint, potential fees/costs and settlement, hearing schedule.	0.30	49.50	SBA
	Telephone call to Mr. Blackman re communication with plaintiff's attorney.	0.10	16.50	SBA
	Letter to all counsel re communication with plaintiff's attorney Chris Brancart.	0.10	16.50	SBA
	Read/analyze letter from [REDACTED] [REDACTED]	0.10	16.50	SBA
	Read/analyze rules re hearing re second potential motion to dismiss.	0.10	16.50	SBA
Oct-09-07	Read/analyze letter from attorney Quint to [REDACTED] [REDACTED]	0.10	16.50	SBA
	letter from and letter to Mr. Ciochon re status of [REDACTED] [REDACTED]	0.10	16.50	SBA
	Telephone call from [REDACTED] re representation of Garibaldi and status.	0.10	16.50	SBA
Oct-10-07	Read/analyze plaintiff estimate re fees and costs incurred.	0.10	16.50	SBA
	status report to [REDACTED] re concerns re plaintiff fees and exposure.	0.10	16.50	SBA

	Letter to all defense counsel re plaintiff fees incurred.	0.10	16.50	SBA
	Read/analyze letter from attorney Quint re [REDACTED] attorney.	0.10	16.50	SBA
Oct-11-07	Telephone call with defense counsel re status, second motion to dismiss, pros and cons of [REDACTED]	1.50	247.50	SBA
	Read letter from x 2 attorney Blackman re defense conferences.	0.10	16.50	SBA
	Legal Research re [REDACTED]	1.30	214.50	SBA
Oct-16-07	Telephone call with all defense counsel re status of motions to dismiss.	0.50	82.50	SBA
	Read/analyze letter from [REDACTED] to Mr. Ciochon re Garibaldi representation.	0.10	16.50	SBA
	Letter to [REDACTED] re questions re Martin letter to Ciochon.	0.10	16.50	SBA
	Read/analyze Garibaldi draft motion to dismiss first amended complaint and Mr. Quint's revisions thereto.	0.30	49.50	SBA
	Draft/revise motion to dismiss re first amended class action complaint.	0.40	66.00	SBA
	Read/analyze and compare complaint and first amended class action allegations for use in dispositive motion.	0.60	99.00	SBA
Oct-17-07	Read/analyze letter from plaintiff's attorney and letter from attorney Blackman re new motions and effect on case Management Conference.	0.10	16.50	SBA
Oct-18-07	Letter to Mr. Quint re submission of motion.	0.10	16.50	SBA
	Read/analyze final submission of Garibaldi re motion to dismiss.	0.20	33.00	SBA

Draft/revise motion to dismiss re review of specific allegations re reliance and consistent with Garibaldi submission.	1.10	181.50	SBA
Oct-19-07 Telephone call from [REDACTED]	0.10	16.50	SBA
Totals	28.90	\$4,768.50	

DISBURSEMENTS

Jul-26-07 Outside printing re Macias; view/print documents from PACER 3 @ 0.08	0.24
Aug-22-07 Outside printing re Macias; view/print documents from PACER 11 @ 0.08	0.88
Sep-13-07 Online research re: Macias [REDACTED]	15.21
Sep-19-07 Out-of-town travel -parking	24.50
Out-of-town travel -bridge toll	5.00
Out-of-town travel -mileage 31 @ 0.48	14.88
Oct-01-07 Court Fees re: Macias 9/12	15.21
Oct-03-07 Photocopying @ \$.10 per page. 913 @ 0.10	91.30
Totals	\$167.22
Total Fee & Disbursements	\$4,935.72
Previous Balance	6,719.80
Balance Now Due	\$11,655.52

TAX ID Number 94-3268610

ALLMAN & NIELSEN, P.C.
 100 Larkspur Landing Circle, Suite 212
 Larkspur, CA 94939

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January 18, 2008

Attention: [REDACTED]
 File #: FA-576
 Inv #: 726
RE: Macias v. Tomanek

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Oct-22-07	Telephone call from Ms. Martin re information re motions.	0.10	16.50	SBA
Oct-25-07	letter from plaintiff's attorney re stipulation re briefing re second motion.	0.10	16.50	SBA
	Letter to plaintiff's attorney re stipulation.	0.10	16.50	SBA
Oct-26-07	Read/analyze letter from Mr. Ciochon to Ms. Martin re [REDACTED]	0.10	16.50	SBA
	Read/analyze and execute stipulation re briefing.	0.10	16.50	SBA
	Read/analyze court's ruling re briefing.	0.10	16.50	SBA
Oct-29-07	Letter to attorney Blackman re concern re reply briefing.	0.10	16.50	SBA
Nov-12-07	Read/analyze plaintiff opposition to motion of Garibaldi.	0.30	49.50	SBA
	Read/analyze plaintiff opposition to motion of Tomanek.	0.10	16.50	SBA
Nov-13-07	Letter to Mr. Quint re and enclosing plaintiff opposition papers re pending motions to dismiss.	0.10	16.50	SBA

Nov-15-07	Letter to Mr. Blackman and Ciochon re teleconference to discuss reply.	0.10	16.50	SBA
	letter from Mr. Blackman and Mr. Ciochon re participation in meeting by telephone to discuss reply strategy.	0.10	16.50	SBA
Nov-16-07	appeared at and participated in joint defense conference re plaintiff opposition to motions to dismiss and strategy re reply approach, settlement, potential discovery.	0.90	148.50	SBA
	Review Shmuck decision and cases cited in plaintiff opposition in preparation for teleconference with defense attorneys.	1.20	198.00	SBA
Nov-18-07	letter from Mr. Quint re status and reply conference.	0.10	16.50	SBA
Nov-19-07	letter from Mr. Ciochon re preparation of reply to opposition re motion to dismiss.	0.10	16.50	SBA
	Legal Research further re cases upon which plaintiff opposition relies, including shepardize and review all cases in ninth circuit re Schmuck decision of U.S. Supreme Court.	1.40	231.00	SBA
Nov-26-07	Letter to attorney Quint re reply concerns and re telephone call from [REDACTED]	0.10	16.50	SBA
	Letter to attorney Ciochon re concerns re submission of reply briefs.	0.10	16.50	SBA
	letter from Mr. Ciochon re reply strategy.	0.10	16.50	SBA
	Read/analyze proposed reply brief of Garibaldi.	0.40	66.00	SBA
	Letter to Mr. Ciochon re suggested revisions/comments re reply of Garibaldi.	0.10	16.50	SBA
	Draft/revise further reply of Tomanek to opposition of plaintiff to motion to dismiss.	0.90	148.50	SBA
	Legal Research further re shepardize all cases cited by plaintiff in opposition to motion to dismiss and review for application to our case.	0.70	115.50	SBA
Nov-28-07	letter from and letter to Mr. Quint re reply brief.	0.10	16.50	SBA

Dec-11-07	Read/analyze multiple letter from Mr. Ciochon, Mr. Quint re [REDACTED] and proposed action re same.	0.10	16.50	SBA
	Letter to all co-counsel re proposed action re [REDACTED]	0.10	16.50	SBA
	Read/analyze stipulation executed by all counsel re case Management Conference and adr deadlines.	0.10	16.50	SBA
	Read/analyze proposed stipulation re deferral of case Management Conference and adr pending motion disposition.	0.10	16.50	SBA
	Letter to Mr. Blackman re stipulation.	0.10	16.50	SBA
Dec-13-07	Read/analyze court's ruling granting stipulation.	0.10	16.50	SBA
Dec-14-07	Telephone call with x 2 [REDACTED]	0.40	66.00	SBA
	Letter to co-counsel re contact with [REDACTED]	0.10	16.50	SBA
	letter from counsel re [REDACTED]	0.10	16.50	SBA
Jan-04-08	Telephone call to attorney Ciochon re status and proposed action re tenant files/hearings.	0.20	33.00	SBA
Jan-07-08	Read/analyze two additional and newly added plaintiff tenant files from attorney for Garibaldi, Salambue and Duran.	1.40	231.00	SBA
	letter from multiple defense counsel re pre hearing conference.	0.10	16.50	SBA
	Letter to defense counsel re pre hearing conference.	0.10	16.50	SBA
Jan-08-08	status report to [REDACTED] re order re motion to dismiss.	0.10	16.50	SBA
	Letter to defense counsel re ruling granting motions to dismiss.	0.10	16.50	SBA
	letter from defense counsel re necessity to retain defense meeting to discuss ruling ramifications.	0.10	16.50	SBA

	Read/analyze court's ruling granting both defendants' motions to dismiss.	0.60	99.00	SBA
Jan-09-08	Telephone call with defense counsel re strategy post judgment and potential fee motion.	0.70	115.50	SBA
	Letter to multiple defense counsel re fee motion issues.	0.20	33.00	SBA
	Letter to plaintiff's attorney re meet and confer conference.	0.10	16.50	SBA
	status report to [REDACTED] re proposed further action/strategy.	0.10	16.50	SBA
	Telephone call to [REDACTED] re status post judgment.	0.10	16.50	SBA
	letter from multiple defense counsel re judgment, order, proposed action, potential fee motion issues.	0.10	16.50	SBA
	Read/analyze court's judgment on order of dismissal.	0.10	16.50	SBA
	Read/analyze evidence re potential fee motion as post judgment strategy.	0.80	132.00	SBA
	Legal Research re potential motion for attorney's fees, including analysis of Rule 54 and meet and confer requirements and review of [REDACTED] case, [REDACTED] and shepardize all cases re same and review [REDACTED] of Ninth Circuit and [REDACTED] cases from state law.	1.20	198.00	SBA
Jan-10-08	Telephone call with [REDACTED] re plan of action re ruling dismissing action from federal court and confirm necessity and okay for legal Research in excess of three hours re potential fee motion.	0.30	49.50	SBA
	Telephone call with attorney Blackman re concerns and debriefing re telephone call with plaintiff's attorneys.	0.20	33.00	SBA
	status report to [REDACTED] re motion.	0.10	16.50	SBA

	Letter to plaintiff's attorney re meeting to discuss post ruling fee motion/settlement.	0.10	16.50	SBA
	letter from plaintiff's attorney re meeting re meet and confer.	0.10	16.50	SBA
	met and conferred with plaintiff's attorney re fee motion and disputed viability of same.	0.30	49.50	SBA
	Legal Research re authorization re fee motion in light of dismissal by court, including [REDACTED]	2.70	445.50	SBA
	[REDACTED] and Shepardize same and review shepardized cases for same, rules 54-6			
	Letter to multiple defense counsel re proposed action, [REDACTED]	0.60	99.00	SBA
Jan-11-08	prepared draft declaration in support of fee motion per court requirements.	0.80	132.00	SBA
	Draft/review and prepared initial draft re memorandum of points and authorities in support of motion for fees.	1.30	214.50	SBA
Jan-14-08	Read/analyze billings re submission to support fee motion and prepared redactions re privileged matters.	1.30	214.50	SBA
	Read/analyze and review Chang decisions re distinguishable from our case and draft/review letter to plaintiff's attorney re same in further meet and confer.	0.40	66.00	SBA
	Draft/review further re declaration to support fee submission consistent with rules.	0.60	99.00	SBA
	Legal Research further re support for fee motion and review legal authorities re application of language of contract to case, including review and analysis of [REDACTED]	2.40	396.00	SBA
Jan-15-08	Draft/review memorandum of points and authorities in support of fee motion.	3.90	643.50	SBA
	Read/analyze plaintiff first amended complaint allegations and allegations of plaintiff	1.20	198.00	SBA

opposition to motion to dismiss re support for fee motion.

	Draft/revise letter to defense counsel re status of fee motion submission and re declaration requirements.	0.20	33.00	SBA
Jan-17-08	Letter to defense attorneys re draft motion and status of finalization.	0.10	16.50	SBA
	Draft/revise further motion for fees, including additional legal Research re fee entitlement and unpublished decision, [REDACTED] Shepardize cases to which reference is made in points and authorities.	4.30	709.50	SBA
	Legal Research re support for fee motion, re prevailing party status, "on the contract" interpretation, application of terms of lease to construction of action as contractual, and fees on fees.	2.60	429.00	SBA
	Draft/revise further points and authorities re fee motion.	1.30	214.50	SBA
	Draft/revise declaration to include evidence re order, judgment and lease agreements.	0.30	49.50	SBA
	Draft/revise further itemization of fees incurred in defense.	0.80	132.00	SBA
Jan-18-08	Draft/revise tables re fee motions, including review of authorities and contents.	0.60	99.00	SBA
	Letter to Mr. Ciochon re lease agreements.	0.10	16.50	SBA
	letter from Mr. Ciochon re lease agreements.	0.10	16.50	SBA
	Totals	41.60	\$6,864.00	

DISBURSEMENTS

Oct-30-07	Photocopying @ \$.10 per page. 18 @ 0.10	1.80
Jan-09-08	Photocopying @ \$.10 per page. 20 @ 0.10	2.00
Jan-15-08	Photocopying @ \$.10 per page. 122 @ 0.10	12.20
	Totals	\$16.00

Total Fee & Disbursements	\$6,880.00
Previous Balance	11,655.52
Balance Now Due	\$18,535.52

TAX ID Number 94-3268610

ALLMAN & NIELSEN, P.C.
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January 22, 2008

Attention: [REDACTED] File #: FA-576
 Inv #: Sample

RE: Macias v. Tomanek

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jan-19-08	Legal Research re further points for fee motion per co-counsel input and revised draft.	2.40	396.00	SBA
	Letter to counsel re revised draft re fee motion.	0.10	16.50	SBA
Jan-21-08	Telephone call with x 2 counsel for Garibaldi re fee motion concerns/strategy and submission of one points and authorities jointly.	0.70	115.50	SBA
	Legal Research re further points and arguments re fee motion.	3.30	544.50	SBA
Jan-22-08	Telephone call with counsel re fee motion concerns.	0.30	49.50	SBA
	letter from counsel re fee motion questions.	0.10	16.50	SBA
	Letter to counsel re fee motion concerns x 3.	0.10	16.50	SBA
	Draft/revise declaration of Sara Allman.	0.30	49.50	SBA
	Legal Research further re points and draft/revise fee arguments, shepardize and analyze authorities, finalize for submission.	2.60	429.00	SBA
	Draft/revise tables of contents and authorities.	0.30	49.50	SBA

Read/analyze proposed submissions of Garibaldi counsel and declarations of other counsel in support of fee motion.	0.20	33.00	SBA
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Totals	10.40	\$1,716.00	
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Total Fee & Disbursements	\$1,716.00
Previous Balance	18,535.52
Balance Now Due	\$20,251.52

TAX ID Number 94-3268610